

MAY 23 2006

OFFICIAL COMMUNICATION FOR ENTRY

HICKMAN PALERMO TRUONG & BECKER LLP
2055 GATEWAY PLACE, SUITE 550
SAN JOSE, CALIFORNIA 95110-1089
TEL: (408) 414-1080
FAX: (408) 414-1076

FACSIMILE TRANSMITTAL SHEET

| | | | |
|---------------|-----------------------------|-------------------------------------|-----------------|
| TO: | Djenane M. Bayard, Examiner | FROM: | Craig G. Holmes |
| COMPANY: | USPTO | DATE: | MAY 23, 2006 |
| FAX NUMBER: | (571) 273-8300 | TOTAL NO. OF PAGES INCLUDING COVER: | 4 |
| PHONE NUMBER: | (571) 272-3878 | SENDER'S REFERENCE NUMBER: | 50325-0505 |
| RE: | Interview Summary | U.S. SERIAL NUMBER: | 09/728,442 |

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Attached for your review is an Interview Summary for the above referenced application.

Cordially,

Craig G. Holmes
Reg. No. 44,770

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT(S) NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

RECEIVED
CENTRAL FAX CENTER

MAY 23 2006

Docket No. 50325-0505 (Seq. No. 3877)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|----------------------------|---|----------------------------|
| In re Application of | : | Confirmation No.: 2497 |
| Christian Lemler, et al. | : | Group Art Unit: 2141 |
| Serial No.: 09/728,442 | : | Examiner: Djenane M Bayard |
| Filed: November 30, 2000 | : | |
| For: ONLINE STANDARDIZED | : | |
| CONTRACT CONFIGURATION FOR | : | |
| SERVICE LEVEL AGREEMENT | : | |
| MONITORING | : | |

INTERVIEW SUMMARY

Hon. Commissioner for Patents
Mail Stop AF
P.O. Box 1450
Alexandria, VA 22313-1450

By Facsimile: (571) 273-8300

Sir:

The Applicant thanks the Examiner for the Interview conducted on May 23, 2006. The interview was between Examiner Djenane Bayard and the applicant's attorney, Craig G. Holmes. Pending Claims 1 and 12 that were rejected or objected to in the Office Action were discussed along with U.S. Patent No. 6,336,138 issued to *Caswell*, U.S. Patent No. 6,397,359 issued to *Chandra*, and U.S. Patent No. 6,701,342 issued to *Bartz* as rejected in the Final Office Action mailed on March 10, 2006.

The discussion began with a clarification of the rejection of Claim 1 on pages 2 and 3 of the Office Action, and in particular what the Final Office Action was relying upon to show the "schema that provides a set of rules for defining both the contents of the service level agreements and how to organize the contents of service level agreements." Specifically, the Applicant noted that this features is initialed rejected based on *Ellesson* on page 3, then the Final Office Action states that *Ellesson* doesn't disclose this feature on page 4, and then the Final Office Action says that *Caswell* discloses this feature later on page 4. The Examiner clarified that the portion of the Final Office Action stating that *Ellesson* does not disclose this

Application of Christian Lemler, et al., Ser. No. 09/728,442, Filed 11/30/00
Interview Summary

feature in the top paragraph on page 4 is incorrect, and thus this feature is rejected in the Office Action independently based on either *Ellesson* or *Caswell*. The Applicant thanks the Examiner for the clarification.

Next, the discussion focused on the rejection of this feature on *Caswell*, with the Examiner explaining that *Caswell*'s "service model template" is taken as being the schema feature of Claim 1. After the Applicant sought further explanation of how *Caswell*'s "service model template" that is a "a generic specification of the service topology and measurement topology for the service of interest" was being read as an SLA of Claim 1 that the Application defines as a "contract between the supplier of a service...and the users of that service," the Examiner explained that the Col. 6, lines 1-15 of *Caswell* were being interpreted as an "agreement" and that the service model template 34 is the "schema."

Regarding the rejection of the last two steps of Claim 1 and the rejection of those steps on *Bartz*, the Applicant sought clarification about what in the cited portion of *Bartz* was being relied upon in the Final Office Action as disclosing the service level contract or SLC. The Examiner explained that the service level objective, or SLO, was being taken as the SLC of Claim 1. However, when the Applicant pointed out that the SLOs were defined in *Bartz* on Col. 1, lines 50-51 as the "SLA compliance criteria" and that *Bartz* explains that the "SLOs are the fundamental components of the SLAs," (Col. 5, line 50), and that the SLC is implemented via one or more SLAs (e.g., the SLC contains SLAs, not vice versa), the Examiner agreed that the SLOs of *Bartz* were not the same as the SLC of Claim 1.

Regarding the rejection of the last two steps of Claim 12 that are directed to "interface data," the Examiner clarified that the first citation to Col. 7 of *Chandra* is to lines 7-49. The Examiner also explained that although *Chandra* disclose the console node 20, it would be obvious to one of ordinary skill in the art to implement the console node 20 via a client-server approach, and therefore that the result would disclose the last two steps of Claim 12. The Examiner explained that an additional reference could be cited to show such a client-server model and incorporated into the rejection of Claim 12. The Applicant appreciates the Examiner's clarification as to the basis of the rejection of these two steps of Claim 12.

Finally, the finality of the Office Action was discussed, with the Applicant noting that the previous response merely rewrote dependent claims in independent form that were indicated in the two previous office actions to be allowable if that were done, with the

Application of Christian Lemler, et al., Ser. No. 09/728,442, Filed 11/30/00
Interview Summary

Applicant explaining that this was accomplished by moving those otherwise allowable dependent claims into their respective claims. The Applicant noted MPEP 706.07(a) that states that while second or subsequent office actions should be made final, that should not be done when the Examiner introduces a new ground of rejection that is neither necessitated by the Applicant's amendment or an IDS.

The Applicant pointed out that the previous response, consisting of merely the incorporation of subject matter twice indicated in office actions to be allowable, into the independent claims was not an amendment that would necessitate a new ground of rejection. Yet the Applicant explained that new grounds of rejection were provided for those independent claims in which the features previously indicated to be allowable were now being rejected based on *Chandra* and *Bartz* for the first time. Thus, the Applicant requested that the finality of the Office Action mailed on March 10, 2006 be withdrawn, and the Examiner agreed to withdraw the finality of that Office Action, and the Applicant thanks the Examiner.


The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: May 23, 2006


Craig G. Holmes
Reg. No. 44,770

2055 Gateway Place, Suite 550
San Jose, California 95110-1089
Telephone: (408) 414-1207
Facsimile: (408) 414-1076

| | |
|---|--------------------------|
| CERTIFICATE OF TRANSMISSION | |
| I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office Fax No. (571) 273-8300. | |
| on <u>May 23, 2006</u> | by <u>Larry Reynolds</u> |

Docket No. 50325-0505 (Seq. No. 3877)